

## Chapter NR 736

### ADVERTISING, BIDDING AND AWARD OF ENVIRONMENTAL CONSTRUCTION CONTRACTS

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**NR 736.01 Purpose.** The purpose of this chapter is to establish procedures for the department to implement the advertising and award of contracts for environmental construction contracts pursuant to s. 23.41, Stats. This chapter is adopted pursuant to ss. 227.11 (2), 289.06 (1) and (2), 292.11, 292.31 and 292.41, Stats.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 736.02 Applicability.** This chapter applies to the department's advertising, bidding and award of environmental construction contracts with estimated construction costs that exceed \$30,000, which the department proposes to enter into for response actions taken under the authority of s. 292.11, 292.31 or 292.41, Stats.

**Note:** Small environmental construction projects, with an estimated construction cost of \$30,000 or less, will be processed by the department using expedited procedures not set forth in this chapter.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 736.03 Definitions.** In this chapter:

(1) "Advertisement for proposals" means a written notice issued by the department announcing that sealed bids will be received for a specific environmental construction project, inviting prospective bidders to obtain or review drawings and specifications for the purpose of submitting a bid to do work.

(2) "Bid" means a completed standard bid form on which the bidder has set forth the price or prices for which the bidder shall be willing to enter into a contract to perform and complete the work bid, in full compliance with the contract documents.

(3) "Bidder" means a person that submits a bid.

(4) "Bidder's authorized representative" means an individual who has been provided, in writing, the authority to act in the bidder's behalf.

(5) "Bidding period" means the time from the date of first publication of the advertisement for proposals to the time of bid opening.

(6) "Bid guarantee" means a properly executed department form of bid bond, a bank certified check or a cashier's check, in an amount equal to 10% of the highest combination base bid or bids and alternate bids submitted.

(7) "Minority business" means a business certified by the department of administration pursuant to s. 16.287, Stats.

(8) "Supporting document" means those documents submitted with a bid, including the bid guarantee, a power of attorney if a bid bond is submitted as bid guarantee, required affidavit forms and other information specifically requested by the department.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94; corrections in (7) made under s. 13.92 (4) (b) 6., 7., Stats., Register June 2013 No. 690.

**NR 736.05 Advertising. (1)** All drawings and specifications for the project shall be available for distribution to prospective bidders on or before the date upon which the advertisement

for proposals shall be published. The advertisement for proposals shall specify the following information:

- (a) Location of the work.
- (b) Identification of the department as the owner.
- (c) Scope of the work, which describes the primary function of the project.
- (d) That a 10% bid guarantee shall be required.
- (e) Date and time receipt of bids shall close and public opening shall occur.
- (f) Location where bids shall be received.
- (g) Date, time and location where drawings and specifications shall be available.

(2) The department shall advertise for proposals by publication of a class 1 notice under ch. 985, Stats., in the official state newspaper. The notice shall be published a minimum of 30 days prior to bid opening, unless the department indicates in writing that the bidding period will be for a lesser period of time.

(3) In addition to the class 1 notice required in sub. (2), the department may solicit and advertise for proposals by either or both of the following methods:

(a) An advertisement for proposals in trade publications, or newspapers within the locale of the project, which would have the potential of reaching prospective bidders.

(b) An advertisement for proposal mailed directly to potential bidders, if such measure is deemed necessary to encourage adequate competition in bidding.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 736.07 Issuance of addenda. (1)** The department may issue addenda during the bidding period to correct, alter or to provide clarification of the drawings and specifications or other contract requirements for the project being bid or to extend the bidding period. No oral correction, alteration or clarification of bid documents shall be considered valid.

(2) Each addendum issued shall be identified by project number and title, date of addenda and assigned an addendum number which will indicate consecutive issue.

(3) Addenda shall be distributed to every recipient of drawings and specifications for the project being bid, including all locations where drawings and specifications are available for public inspection.

(4) No addenda shall be issued during the last 7 days prior to the published bid opening date, unless such addenda include an extension of the bid opening date for a minimum of 7 additional days.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 736.09 Submittal and receipt of bids. (1)** All bids shall be submitted in sealed envelopes.

(2) The bidder shall place all of the following information on the face of the envelope containing the bidder's proposal:

- (a) A statement that the envelope contains a sealed bid.
- (b) Project name.

- (c) Project number.
- (d) Location of project.
- (e) Bid date.
- (f) Name and address of bidder.

(3) The bidder is responsible for the sealed bid being delivered to the place designated in the published advertisement for proposals, on or before the date and time specified.

(4) All sealed bids received by the department shall be stamped upon the face of the envelope indicating the date and time the envelope was received.

(5) Sealed bids received by the department, after the date and time designated in the advertisement for proposal, shall have the date and time of receipt stamped upon the face of the envelope and be returned to the bidder unopened.

(6) The bidder shall indicate his or her status as a minority business where provided on the bid form.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 736.11 Withdrawal of bids.** At any time before the date and time of bid opening, a bidder or the bidder's representative may withdraw the bid without prejudice to the right of the bidder to submit a new bid. Withdrawal of a bid may be accomplished by one of the following methods:

(1) A written request submitted and signed by the bidder's letterhead stationery.

(2) Personal appearance of the bidder or the bidder's authorized representative. Either individual shall be required to sign a receipt for the withdrawn bid.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 736.13 Bid opening.** (1) A representative of the department shall preside at the bid opening as the bidding officer. At the date and time for bid opening, the bidding officer shall announce to those in attendance that bidding is officially closed and public opening and reading of bids will commence.

(2) All of the following rules shall be observed when reading the bids:

(a) Following identification of each bid to be read, it shall be publicly stated whether a bid guarantee has or has not accompanied the bid. If a bid guarantee has not accompanied the bid, the remainder of the bid contents may not be read.

(b) Where both written word and numerical dollar amounts are requested on the bid form, the written word amount is the amount that controls and that shall be publicly read.

(3) The bidding officer shall identify the project title for which the bid shall be read.

(4) All of the following bid information shall be publicly read aloud by the bidding officer and recorded in the official bid tabulation form as bids are read:

- (a) The name of bidder whose bid is being read.
- (b) The written word price quotation for the base bid and any alternate bids.
- (c) If offered, the written word price quotation of a combined bid and identification of the base bids, which constitute the work proposed under the combined bid submitted.

(5) Upon completing the public reading of bids, the bidding officer shall announce that the bid opening for the specific project is officially closed and the results of the bid opening shall be available at a later date after bidding information has been checked and validated.

**Note:** Any informalities, omissions, errors or mistakes will be evaluated by the department during the validation of bids.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 736.15 Rejection of bids.** (1) The department shall reject any bid which evidences any of the following conditions:

(a) The base bid amount and alternate bid amounts as requested in the specifications have not been entered on the bid form.

(b) The bid form has not been signed by the bidder.

(c) The bid guarantee has not accompanied the bid form.

(d) Receipt of an addendum applicable to the award of contract has not been acknowledged on the bid form.

(e) The bid form has been altered or changed in such a way that it incorporates unsolicited material, either directly or by reference, which would alter any essential provision of the contract documents or require consideration of the unsolicited material in determining the award of contract.

(f) The bid is submitted by a bidder whom, through investigation, is found not to be qualified or responsible under s. NR 736.17 (2).

(2) The department may reject any bid if the included documents have any of the following informalities, unless such informalities are waived by the department and corrected by the bidder within 3 business days from date and time of bidder notification:

(a) Submittal of bid bond on a form other than that contained in the specification volume.

(b) No power of attorney submitted with bid bond.

(c) Date of power of attorney precedes date of bid bond.

(d) Bonding company is not licensed to do business in Wisconsin.

(e) Failure to submit an affidavit, affirming that bidder is not guilty of collusion or fraud with regard to bid submittal.

(f) Failure to submit any other document which is specifically requested in the specifications to be submitted with the bid form, acceptance of which would not constitute a correction or alteration of the bid.

(3) The department may reject all low bids constituting the total lowest construction cost when such amount exceeds the authorized funds available.

(4) The department may reject any or all bids if, in the opinion of the department, the best interest of the state will be served.

(5) Rejection of either a combined bid or the separate bids which correspond to the combined bid, as submitted by the bidder, shall not invalidate the other.

(6) The reason or reasons for rejection of a bid, if due to any of the conditions stated in this section shall be sent to the bidder in writing within 30 days after the date of bid opening.

(7) If a bidder gives prompt written notice that a contract will not be executed due to a mistake, error or omission in the bid, which does not constitute gross negligence, the bid guarantee may be returned by the department.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.

**NR 736.17 Award of contracts.** (1) The department shall award contracts to the lowest qualified responsible bidder which results in the lowest total construction cost for the project if such amount does not exceed the available funds authorized for the project.

(2) The lowest qualified responsible bidder shall be determined utilizing all of the following criteria:

(a) The lowest bidder is one whose bid contains the lowest total dollar amount when compared with other bids submitted for the same work.

(b) A qualified bidder is one who meets all of the following conditions:

1. Has completed one or more projects of at least 50% of the size or value of the work being bid and of the type of work completed similar to that being bid. If other experience requirements, other than size or value of past work is deemed necessary by the department, such requirements shall be described in the bid specifications.

2. Has access to all necessary equipment and has the organizational capacity and technical competence necessary to perform the work properly and expeditiously.

3. A joint venture consisting of 2 or more contracting firms organized for the purpose of entering into an environmental construction contract as a single entity shall be considered a qualified bidder, if the assignment of and provisions for continuity of the various responsibilities within the joint venture are agreed upon prior to award of a contract and further providing that one of the individual firms constituting the joint venture is a qualified bidder as specified in this paragraph.

(c) If the project is of such magnitude as to limit competition as a result of the conditions established for qualification, the department may waive any conditions for qualification.

(d) A responsible bidder is one who meets all of the following criteria:

1. Maintains a permanent place of business.
2. Provides a sworn statement upon request, which shows the bidder has adequate financial resources to complete the work being bid, as well as all other work the bidder is under contract to complete.
3. Is bondable for the term of the proposed contract.
4. Has a record of satisfactorily completing past projects. Criteria considered in determining satisfactory completion of projects by contractors and subcontractors shall include:
  - a. Contracts completed in accordance with drawings and specifications.
  - b. Diligently pursued execution of the work and completed contracts according to the established time schedule and department authorized extensions.
  - c. Fulfilled guarantee requirements of the contract documents.

d. Established and diligently maintained a satisfactory affirmative action program in accordance with the contract provisions.

5. Is not presently on an ineligible list maintained by the department of administration for noncompliance with equal employment opportunities and affirmative action requirements as provided in s. 16.765 (9), Stats., is not presently on an ineligible list for wage rate violations, or on a federal debarred list if the project is federally funded.

(3) The department shall make the final determination as to which bidder is the lowest qualified responsible bidder.

(4) If the total of the proposals submitted by the lowest qualified responsible bidder or bidders exceeds the estimated project cost, the department may negotiate deductive changes, not to exceed 5% of the total bid by any of the lowest qualified responsible bidders, for each contract, to bring the bids within funding limits.

(5) The department may consider any unsolicited material accompanying the bid of the lowest qualified responsible bidder only after contracts have been awarded on the basis of the information contained in the bid form. Such consideration may be given to unsolicited material only if it is in the best interest of the state to do so, and does not warrant rejection due to any of the conditions stated in s. NR 736.15 (1) (e).

(6) Award of a contract shall not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department.

(7) Any contractor or subcontractor who enters into a contract on a state environmental construction project shall assume an obligation to take whatever affirmative action is necessary to ensure equal employment opportunity in all aspects of employment, irrespective of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), Stats., sexual orientation or national origin.

**History:** Cr. Register, April, 1994, No. 460, eff. 5-1-94.